IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
and
THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT APPEAL NO : 911 of 2004 AND W.P. 9297 OF 2004.

WRIT APPEAL NO. 911 OF 2004.

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/05/2004 in WP NO : 9123 OF 2004 on the file of the High Court.)

Between:
K. Dastagiri, S/o. Rosaiah,
R/o. D.No. 14-13-12, Kutumbarao Street, Hanumanpet, Vijayawada.
..... APPELLANT

AND

1 Andhra Pradesh State Road Transport Corporation, Rep. by its Chariman and Managing Director,
Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Krishna Region,
Vijayawada.
3 The Divisional Manager (Urban) Krishna Division, APSRTC,
Vijayawada.
4 The Depot Manager, Governorpet Depot II
APSRTC, Gopvernorpet, Vijayawada.
.....RESPONDENTS

Counsel for the Appellant: MR.G.VIDYASAGAR

Counsel for the Respondents : MR.VENKATESWARLU POSANI

WRIT PETITION NO : 9297 of 2004

Between:
K.Dastagiri, S/o Rosaiah,
R/o D.No.14-13-12, Kutumbarao Street, Hanumanpet, Vijayawada.
..... PETITIONER

AND

1 Andhra Pradesh State Road Transport Corporation, rep.by its Chairman and Managing Director,
Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Krishna Region, Vijayawada.
.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or Writ particularly one in the nature of Writ of Mandamus or any other appropriate Writ, declare the tender notification No.01/797(07)/2004/RM(K) dated 19-4-2004 calling for licence for Pan, Bakery and Fast Food Centre at City Bus Terminus, is illegal and arbitrary and consequently set aside the same and pass such other order or orders.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: MR.VENKATESWARLU POSANI

ORAL COMMON JUDGMENT: (per The Honourable Sri Devinder Gupta, the Chief Justice)

Since the subject matter of both the Writ Appeal and the Writ Petition is one and the same, both the cases are clubbed together and are being disposed of by common judgment, and, the parties are referred to as arrayed in the Writ Petition.

By the Deed of Licence dated: 8.5.2002, petitioner was granted licence for a period of three years from 31.5.2001 to 30.5.2004 for running Tea/Fast Food, Water Bottle, Bakery, Milk products etc.,

making it clear that further extension shall not be given after expiry of the period of licence and fresh tenders will be called for. After agreement was entered into between the parties, a Circular seems to have been issued by the Andhra Pradesh Road Transport Corporation on 29.10.2003 as regards the period of lience of Stalls/Shops etc., which were allotted in response to tenders called prior to 1.3.2003 stating that their licence period shall be increased by three more years to complete the maximum licence period of six years. Pursuant to the Circular, petitioner made a representation to the respondents for extension of period of licence for a further period of three years so as to expire on 31.5.2007. No decision was taken on the said representation. Petitioner had to file a Writ Petition being W.P.No. 8007 of 2004, which was disposed of by this Court with direction to respondents to consider petitioner's representation dated: 28.2.2004 in terms of the Circular dated: 29.10.2003. Pursuant to the said direction, the respondents, by proceedings dated: 5.5.2004, passed an order rejecting the representation and refusing to extend the period of licence and stating that the Divisional Tender Committee examined the representation together with recorded evidence, which observed that many nuisance cases were noticed by the Police and cases were booked against the petitioner-licensee while conducting the business beyond permitted time. As against the same, petitioner filed Writ Petition No. 9123 of 2004, which was dismissed by learned Single Judge on 18.5.2004. Against the same, the present Writ Appeal has been filed. Appeal was admitted and order of interim suspension for a period of one month was granted on 25.5.2004. In the meanwhile, petitioner filed another Writ Petition No. 9297 of 2004, which has also been posted before us. The said Writ Petition has been filed questioning the action of the respondents in issuing tender notification

calling for fresh tenders as illegal and arbitrary, and, sought for setting aside the said notification.

We have heard the learned counsel for parties and gone through the record.

Learned counsel for the petitioner submits that the action of the respondents is arbitrary since petitioner was permitted to run the Tea Stall even beyond 11 p.m. because of the traffic movements at Vijayawada Bus Station and only at the behest of Police, respondents are objecting to the petitioner keeping his canteen open after 11.00 p.m. Petitioner had filed Writ Petition No. 20059 of 2002 against the police, and, action of the police was held to be illegal since petitioner was permitted by the Regional Manager, Krishna Region, by letter dated: 9.7.2001 to keep the stall open in the night even after 11 p.m. Learned counsel for the petitioner submits that the petitioner is entitled, as a matter of right, to get the licence extended for a further period of three years, and the petitioner will be ready to accept any terms and conditions imposed upon him.

The short question that arises for our consideration is as to whether the petitioner is entitled, as a matter of right, to further extension of three years from the date of expiry of the present licence?

We have already noticed that as per the terms of Deed of Licence, appellant is not entitled for further extension of his licence. It is only by virtue of the Circular, dated: 29.10.2003 that petitioner claims a right. The said clause reads:

> " The licence period of Stalls/Shops, Space/Office accommodation, Telephone Booths (allotted in response to the tenders called prior to 1-3-2003) whose licence period was three years shall be increased by three more years to complete the maximum licence period of Six years."

The aforementioned clause says that licence period of licensees

(which includes the petitioner), who were allotted the rooms in response to tenders called prior to 1st March, 2003 and whose licence period was three years, shall be increased by three years to complete the maximum licence period of six years. This clause, on the face of it, does not confer any right and the extension is subject to certain conditions, and, even for entering into fresh agreement, running of a business by a licensee creating nuisance is one of the grounds which would entail in the rejection of the request for extension. Collection of excess rates than MRPs is the violation of the terms and conditions, which would not entitle the petitioner for any further extension, and, that was one of the grounds taken by the respondent while rejecting the petitioner's representation by order dated: 5.5.2004.

We need not go into the correctness of the grounds taken by the respondents, since in Writ jurisdiction, we are supposed to go into the question as to whether decision-making process has been fair, and, the concerned authorities have taken into consideration all the relevant facts. In case, as per the material available before the decision-making authority, petitioner was found to be indulging in some activities, thereby, violating the terms of licence, the decision of the respondent not to extend the period of licence, cannot be found fault with, and, more over, against the decision in not extending the period of licence, petitioner cannot seek Writ of Mandamus, and, for that reason also, we are not inclined to interfere in the matter.

At this stage, learned counsel for the petitioner submits that the period pursuant to the interim order is coming to an end by tomorrow, viz. 25.6.2004, and, on the petitioner's undertaking to peacefully vacate the stall in question within a period of four weeks from today, time may be further extended till 20.7.2004. We take on record the undertaking of the petitioner and accepting the same, direct the

respondents not to disturb the petitioner's continuing to run his business in the premises till 20.7.2004, which, of course, will be subject to the petitioner paying usual licence fees to that period, and, subject to further condition that petitioner will not create any nuisance and withdraw from the stall in question on or before 20.7.2004.

In view of the above, both, the Writ Appeal and the Writ Petition are dismissed. No costs.

DEPUTY REGISTRAR

VR.

To
1 Andhra Pradesh State Road Transport Corporation, Rep. by its Chariman and Managing Director,
Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Krishna Region,
Vijayawada.
3 The Divisional Manager (Urban) Krishna Division, APSRTC,
Vijayawada.
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APSRTC, Gopvernorpet, Vijayawada.
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